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# A Man For All Treasons: Crimes By and Against the Tudor State in the Novels of Hilary Mantel

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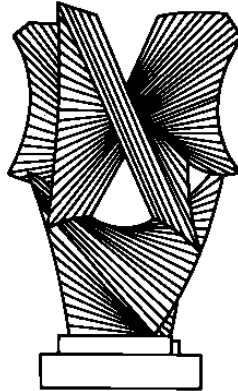
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## A MAN FOR ALL TREASONS: CRIMES BY AND AGAINST THE TUDOR STATE IN THE NOVELS OF HILARY MANTEL

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**A Man For All Treasons:  
Crimes By and Against the Tudor State in the Novels of Hilary Mantel**

**Alison L. LaCroix\***

Forthcoming in Martha C. Nussbaum, Richard H. McAdams, and Alison L. LaCroix,  
eds., *Fatal Fictions: Crime in Law and Literature*

Statements, indictments, bills are circulated, shuffled between judges, prosecutors, the Attorney General, the Lord Chancellor's office; each step in the process clear, logical, and designed to create corpses by due process of law. George Rochford will be tried apart, as a peer; the commoners will be tried first. The order goes to the Tower, "Bring up the bodies." Deliver, that is, the accused men, by name Weston, Brereton, Smeaton and Norris, to Westminster Hall for trial.<sup>1</sup>

- Hilary Mantel, *Bring Up the Bodies* (2012)

The Justices' precept to the Constable of the Tower, commanding him to bring up the bodies of Sir Francis Weston, knt. Henry Noreys, esq. William Brereton, esq. and Mark Smeton, gent. at Westminster, on Friday next after three weeks of Easter. The Constable returns that before the receipt of the precept the persons within-mentioned had been committed by the King's Council for high treason, but that he nevertheless would bring them up as he is required.<sup>2</sup>

- Charles Wriothesley, *A Chronicle of England During the Reigns of the Tudors, From A.D. 1485 to 1559* (1875)

The Tudor novels of Hilary Mantel – *Wolf Hall* (2009) and *Bring Up the Bodies* (2012), with a third installment still to come – depict two species of crime: crimes against the state, and crimes by the state. The crimes against the state are variations on the obvious one in the context of the court of Henry VIII: treason. The crimes by the state, in contrast, are more inchoate and subjective; indeed,

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<sup>1</sup> Hilary Mantel, *Bring Up the Bodies* (New York: Henry Holt and Co., 2012), 364.

<sup>2</sup> Charles Wriothesley, *A Chronicle of England During the Reigns of the Tudors, From A.D. 1485 to 1559*, vol. I, ed. William Douglas Hamilton (London: Camden Society, New Series XI, 1875), 201-02.

they are portrayed by Mantel as perhaps only potential crimes. Torture, or merely aggressive questioning? Blackmail, or simply shrewd intelligence gathering? The reader cannot be certain whether a crime has in fact been committed, or whether she simply expects that a crime will be committed, given that Mantel's protagonist is Henry's notorious *consigliere* Thomas Cromwell, described in Mantel's "Cast of Characters" as "a blacksmith's son: now Secretary to the King, Master of the Rolls, Chancellor of Cambridge University, and deputy to the king as head of the church in England."<sup>3</sup>

Throughout the novels, Mantel plays with her readers' expectations of Cromwell, whose notorious posterity stems from at least two sources, only one of which was contemporary: his brooding, massy, black-clad portrait by Hans Holbein the Younger from 1532-33, and Robert Bolt's 1960 play *A Man For All Seasons*, in which Henry describes Cromwell as one of his "jackals with sharp teeth and I am their lion" and another character calls him "a coming man" (surely a faint-hearted euphemism for the man whom Bolt depicts as holding Cromwellian protégé Richard Riche's hand in the flame of a candle).<sup>4</sup> As I will demonstrate, Mantel gives readers a Cromwell famous in his own time as a formidable enforcer of the royal will, a man tutored in the armies, alleys, and counting-houses of continental Europe. Mantel's Cromwell is fluent in, *inter alia*, Flemish, ancient Greek mnemonic tools, knife-fighting, silks and woollens, and canon and common law. Cromwell's reputation in his own time made his contemporaries fear him, Mantel suggests, permitting him to prosecute his work as the king's servant efficiently and with a minimum of actual violence. By 1536, the year he helped to bring down Anne Boleyn, Mantel's Cromwell is such a terrifying figure that his presence leads the targets of his inquiries to talk themselves into believing that they have been tortured.

Yet Mantel also presents a richer picture of Cromwell. To be sure, her Cromwell possesses some qualities of the Machiavellian henchman (indeed, one personally acquainted with, if unimpressed by, the author, and seised of an early version of *The Prince*<sup>5</sup>) and all-around fixer. But as Mantel wrote in an essay in the *Guardian*, "If a villain, an interesting villain, yes?"<sup>6</sup>

Mantel thus gives us a complex and interesting villain who is less thoroughly villainous than the petulant, narcissistic king he serves, and more far-

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<sup>3</sup> *Bring Up the Bodies*, ix.

<sup>4</sup> Robert Bolt, *A Man For All Seasons* (1960). Bolt's characterization echoed that of Charles Dickens, who called Cromwell "a most intolerable ruffian, a disgrace to human nature, and a blot of blood and grease upon the History of England." Charles Dickens, *A Child's History of England* (1852).

<sup>5</sup> *Wolf Hall*, 97 ("He has got Niccolò Machiavelli's book *Principalities*: it is a Latin edition, shoddily printed in Naples, which seems to have passed through many hands. He thinks of Niccolò on the battlefield; of Niccolò in the torture chamber. . . . Someone says to him, what is in your little book? and he says, a few aphorisms, a few truisms, nothing we didn't know before.").

<sup>6</sup> Hilary Mantel, "How I Came to Write *Wolf Hall*," *The Guardian*, Dec. 7, 2012.

sighted and committed to building the nascent English state than any of the courtiers and councilors surrounding him. Mantel's Cromwell is nothing less than the industrious creator of the modern administrative state. In this characterization, Mantel follows in the scholarly path of G.R. Elton, whose *Tudor Revolution in Government* (1953) and subsequent decades of work sought to rehabilitate Cromwell by arguing that he systematized the royal finances, replaced personal rule with modern bureaucracy, and reformed English government.<sup>7</sup> Mantel's novels also sound in the tradition begun by Josephine Tey, whose novel *The Daughter of Time* (1951) acquitted Richard III of the charge of murdering his nephews. Mantel's project is less explicitly rehabilitative, but she does redeem Cromwell from Bolt's characterization. Mantel's Cromwell is always thinking of the future. "Cold-blooded and ruthless though he was," Elton wrote, Cromwell "was also a constitutionalist who realized the potentialities of common law and parliament, and who elaborated and employed the equipment of constitutional monarchy."<sup>8</sup>

In different ways, both Mantel's and Elton's accounts rebut the image of Cromwell as a criminal. I argue that Mantel's Cromwell should in fact be seen as something subtler: not exactly a criminal himself, but a representative of the many aspects of crimes committed by and against the state. The novels depict both types of crime as occurring at the same historical moment in which the modern state was being formed. Because crimes against the state and by the state both presuppose the existence of the state itself, Mantel's and Elton's modernizing, list-making Cromwell may not be as distinct from Bolt's devious Cromwell as the competing accounts would suggest. Mantel has expressly disclaimed the suggestion that her novels are intended to repair Cromwell's image. "It wasn't that I wanted to rehabilitate him," she notes. "I do not run a Priory clinic for the dead. Rather, I was driven by a powerful curiosity."<sup>9</sup>

Mantel's chronicle thus gives us four Cromwells. The first Cromwell is Cromwell the political operative: the monarch's faithful counselor conducting an internal, civil war that requires harsh interrogations amid claims of exigency and crisis. Closely related is the second Cromwell, the prosecutor who zealously brings charges, proffers (some) evidence, and presses for a conviction. The third is Cromwell the modern bureaucrat, always thinking of reforms (even just hours after Anne Boleyn's execution on May 19, 1536); in modern constitutional terms, this Cromwell is also an arm of the executive. The fourth Cromwell is the potentially evil Cromwell: his reputation as torturer is apparently undeserved, at least in the scenes shown to readers, but we still see occasional glimpses of cruelty that hint at the hidden sources of that reputation.

Questions of crime, law, and the relationship between them permeate Mantel's novels. Connecting these themes is their corporeal consequence: the

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<sup>7</sup> See G.R. Elton, *The Tudor Revolution in Government* (1953).

<sup>8</sup> G.R. Elton, "The Political Creed of Thomas Cromwell," *Transactions of the Royal Historical Society*, 5th ser., vol. 6, 92 (1955).

<sup>9</sup> Mantel, "How I Came to Write *Wolf Hall*," *The Guardian*, Dec. 7, 2012.

collision among state power, law (both statutory and judge-made), and human bodies that the late-medieval, early-modern Tudor state produced and consumed.

## I. Cromwell the Political Operative.

In order to understand Cromwell's role as an early modern political counselor, one must situate him in his own legal and political landscape. Scholars of Cromwell, whether critics, apologists, or something in between, have focused on his key role in developing the English law of treason. Cromwell ably deployed the treason prosecution as a weapon against Henry's enemies, until that weapon was turned against him, leading to his own trip to the block on Tower Hill, and his ensuing execution for treason and heresy, in 1540.

The Tudor law of treason comprised both statutory and judge-made law. Before 1534, the textual basis of the law of treason was the Treason Act of 1351, a parliamentary statute that defined treason as follows:

When a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen or of their eldest Son and Heir; or if a Man do violate the King's Companion or the King's eldest Daughter unmarried, or the Wife [of] the King's eldest Son and Heir; or if a Man do levy War against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm, or elsewhere, and thereof be probably attainted of open Deed by the People of their Condition . . . that ought to be judged Treason which extends to our Lord the King, and his Royal Majesty.<sup>10</sup>

In addition to defining treason, the statute thus also established an evidentiary standard. Proving treason required an overt act – an “open deed.”<sup>11</sup> Moreover, the statute contained open-ended language that invited Parliament, acting in its judicial capacity, to expand the definition of treason to cover particular cases as they subsequently arose.<sup>12</sup>

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<sup>10</sup> Treason Act 1351, 1351 Ch. 2, 25 Edw. 3 Stat 5, c. II. The date of the statute is sometimes given as 1352 because the act was passed during the Hilary Term of 1351, which ran from January to March. Because in the old style or Julian calendar, the new year began on March 25 (Lady Day), the year of the statute depended on which dating system was used. England, and later Great Britain, used the Julian calendar until 1752, when Parliament adopted the new style or Gregorian calendar.

<sup>11</sup> G.R. Elton, *The Tudor Constitution* (2d ed. 1982), 59; see also Throckmorton's Case (State Trials, 1 Mary 1554), in Thomas Bayly Howell and Thomas Jones Howell, eds., *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1820* (1816-28), 389-90 (“for thereby the law doth understand the discovering of your treasons”) (Bromley, C.J.).

<sup>12</sup> “And because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded, That if any other case supposed treason which is not above specified doth happen before any Justices, the Justices shall tarry without any going to judgment of the treason till the case be shewed and declared before the King and his Parliament, whether it ought to be judged treason or other felony.” 25 Edw. 3 Stat. 5.

Between 1351 and Anne Boleyn's execution in 1536, however, the penumbra of the statute gradually extended to include new categories of treason. Much of this expansion occurred at the hands of judges. In 1554, Serjeant-at-Law Stanford, one of the prosecutors in Nicholas Throckmorton's treason trial, chided the *pro se* Throckmorton for relying too heavily on the language of the Treason Act. "You are deceived, to conclude all Treasons by the statute of the 25th of Edw. the 3rd; for that Statute is but a Declaration of certain Treasons, which were Treason before at the common law," Stanford informed Throckmorton, who had attempted to parse the statutory language as part of his defense. Stanford, for his part, maintained that the Treason Act was merely declaratory of a broader, more diffuse set of conditions that judges had the power to identify as treason. "Even so there doth remain divers other treasons at this day at the common law, which be not expressed by that statute, as the Judges can declare," Stanford insisted.<sup>13</sup> Against the background of the 1351 statute, treason had evolved through judicial construction to become a common law doctrine. This fact reflected the sixteenth-century conception of a permeable boundary between statutes and judge-made law. Both were regarded as emanations from an overarching body of law, sometimes termed "the common law" and sometimes "the laws of England."<sup>14</sup>

The crucial language of the Treason Act was that making it a crime to "compass or imagine the Death of our Lord the King." In the cases in which Cromwell was involved, particularly that of Anne Boleyn, this charge formed the basis of the indictment. Anne and her alleged lovers were accused of compassing the death of Henry on specific occasions. As the indictment returned by the grand jury for Middlesex stated, "And further, the said Queen and these other traitors, 31 Oct. 27 Hen. VIII., at Westminster, conspired the death and destruction of the King, the Queen often saying she would marry one of them as soon as the King died."<sup>15</sup> The wording comported with the language of the statute: according to the indictment, Anne and her lovers had gone well beyond imagining Henry's death; they had actually conspired to bring it about.

But the indictments against Anne and her alleged confederates (Henry Norris, William Brereton, Francis Weston, Mark Smeaton, and her own brother George Boleyn, Lord Rochford) listed no overt act in furtherance of the conspiracy. On the contrary, the charges against Anne rested on reports of words: "the Queen often saying she would marry one of them as soon as the King died." The open deed, to the extent that one existed, was at most an indirect contemplation of the possibility that Henry might die. Contemporary accounts of Anne's conduct told a similar story, in which Anne's comment about the king's death appears to have been merely a dependent clause to her main outburst amid a quarrel with the courtier Norris a few days before her arrest. The historian Eric Ives describes the scene with such color as to merit a lengthy quotation:

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<sup>13</sup> Id. at 389.

<sup>14</sup> See John Guy, "The Henrician Age," in *The Varieties of British Political Thought, 1500-1800*, ed. J.G.A. Pocock 29 (1993) ("The common lawyers' achievement was therefore to ensure that the word 'law' in Tudor political practice meant 'the laws and customs of England.'").

<sup>15</sup> Middlesex Indictment of Anne Boleyn, May 10, 1536.

It had begun by Anne asking Norris, till then a close ally, why he was postponing his proposed marriage to her cousin, Margaret Shelton, the king's old flame. She obviously suspected that Norris was reluctant to complete the match in view of the current pressure on the Boleyns, so the noncommittal reply he made ["I would tarry a while"] provoked Anne into a shocking imprudence. Flinging away the safety of courtly convention, she said, "You look for dead men's shoes; for if ought came to the king but good you would look to have me." Norris's horrified response to this totally unfair and improper shift in the basis of their relationship was to stammer that if he had any such thought, "he would his head were off," but the queen would not let him escape. She could, she said, undo him if she wanted to. A right royal quarrel about their relationship had then ensued.<sup>16</sup>

The centrality of this episode to the case against Anne, a case largely constructed by Cromwell in his role as Henry's loyal servant, illustrates the power of the species of treason termed "treason by words."<sup>17</sup> Here, too, the extension beyond the precise terms of the 1351 statute initially took place at the hands of courts, through the vehicle of judge-made common law.<sup>18</sup> But the expansion predated Cromwell, for Elton noted that words had been used as evidence of treason at least as early as the fifteenth century.<sup>19</sup>

Two years before Anne's downfall, however, Parliament had passed another treason statute that codified the common law doctrine of treason by words. The Treasons Act of 1534,<sup>20</sup> under which Thomas More was prosecuted and sentenced to death in that year, supported the Succession to the Crown Act of 1533<sup>21</sup> and the Act of Supremacy of 1534.<sup>22</sup> The succession act made the offspring of Anne and Henry, who had married the previous year, the legal successors to the Crown and required all subjects to swear an oath upholding the succession and the supremacy. The supremacy act declared that the king was and always had been the "supreme head of the Church of England" (the statute

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<sup>16</sup> Eric Ives, *The Life and Death of Anne Boleyn* (2004), 335. Ives and other historians regard this quarrel, which took place before several witnesses, as a key turning point leading to Anne's downfall. Immediately following the exchange, Anne "tried to forestall gossip by instructing Henry Norris to go to her almoner on the Sunday morning and volunteer to take his oath that the queen 'was a good woman.'" This desperate ploy seems to have raised suspicions in the opposite direction, leading to a public confrontation between Anne and Henry in the window of Greenwich Palace a few days later, in which onlookers saw Anne producing the two-year-old Elizabeth as she appeared to implore Henry. *Id.* at 325. In Mantel's depiction of the scene, Cromwell notes that no observer could have heard the words that passed between Anne and Henry. *Bring Up the Bodies*, 262.

<sup>17</sup> Elton, *Tudor Constitution*, 59-60.

<sup>18</sup> *Id.* at 60.

<sup>19</sup> *Id.*

<sup>20</sup> 26 Hen. 8 c. 13.

<sup>21</sup> 25 Hen. 8 c. 22. The succession act was another product of the Hilary Term and so is sometimes dated 1534.

<sup>22</sup> 26 Hen. 8 c. 1.



was characterized as “corroboration and confirmation” of this recognition).<sup>23</sup> The third piece of this legislative package was the Treasons Act, which made it treason to “maliciously wish, will or desire by words or writing, or by craft imagine, invent, practice or attempt any bodily harm to be done or committed to the King’s most royal person.”<sup>24</sup> Even under this expanded definition, however, Anne’s conduct did not clearly fall within the scope of treason. If the accounts of Anne’s statements to Norris are to be believed, she had used words contemplating the king’s death, but it is not clear that she maliciously wished, willed, or desired any harm to befall him. Under the 1351 act, moreover, Anne could be understood as compassing the death of the king, but she had arguably not engaged in an overt act, or “open deed,” connected with that possibility.

Mantel depicts Cromwell as the originator of these political and dynastic developments. He propels the passage of the succession, supremacy, and treason acts in 1533-34, in order to support Anne’s position as queen, and then uses those statutes to build the case against Anne in 1536. As Mantel draws him, Cromwell has an ambivalent relationship toward statutes as a legal form, and toward legislative power more broadly. On one hand, she shows him perpetually drawing up new legislation and contemplating the activities of Parliament. He is therefore not simply a spokesman for raw, unchanneled executive power. On the other hand, when Mantel’s Cromwell uses Parliament, he is always using it for a reason: in a cynical reading, to bolster the legitimacy of an already-chosen course of action;<sup>25</sup> in a reading more in line with modern sympathies, to make progress toward what would become the post-Glorious Revolution belief that the king-in-Parliament was the true locus of English sovereignty.<sup>26</sup> But even in this more sympathetic view of Cromwell’s use of Parliament, Cromwell employs Parliament as a tool of executive power, albeit a new and improved version of executive power.<sup>27</sup>

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<sup>23</sup> Id.

<sup>24</sup> 26 Hen. 8 c. 13. By the end of the sixteenth century, the charge of treason by words was waning. Most of the statutes that had recognized the crime had been repealed because their moment of exigency had passed, and the common law version of the offense was no longer recognized. Elton, *Tudor Constitution*, 60.

<sup>25</sup> In a conversation with Mary Tudor, daughter of Henry and Catherine of Aragon, during her period out of favor because of Anne’s rise, Mantel’s Cromwell uses a positivist account of Parliament’s power to justify Henry’s, and therefore his own, decision to remove Mary from the succession by statute. Mary asks Cromwell, “How is it I am put out of the succession, Master Cromwell? How is it lawful?” Cromwell responds: “It is lawful if Parliament makes it so.” Mary replies, “There is a law above Parliament. It is the law of God. Ask Bishop Fisher.” Cromwell: “I find God’s purposes obscure, and God knows I find Fisher no fit elucidator. By contrast, I find the will of Parliament plain.” *Wolf Hall*, 515.

<sup>26</sup> “Where does the prince get this power, and his power to enforce the law? He gets it though a legislative body, which acts on behalf of the citizens. It is from the will of the people, expressed in Parliament, that a king derives his kingship.” *Wolf Hall*, 494; see also G.R. Elton, “The Political Creed of Thomas Cromwell,” 6 *Transactions of the Royal Historical Society* 69 (5th ser. 1956) (arguing that Cromwell’s political creed “centred on the legal supremacy of the king in Parliament and included no ambitions for a purely royal despotism”).

<sup>27</sup> In the early period of Anne’s reign, Mantel depicts both Henry and Cromwell using Parliament to cement the legitimacy of the marriage and its issue. “The king calls him in, with [Bishop]

Not surprisingly, Mantel's Cromwell is a keen drafter and promoter of statutes to aid Henry's campaign to replace Catherine of Aragon with Anne, including not only the act of succession but also the enhanced treason act. Elton argued that the Tudors "reli[ed] on statute" to "expand or contract treason."<sup>28</sup> In a similar vein, John Guy notes that the Reformation was "declared by parliamentary statutes and enforced by common law procedures."<sup>29</sup> Mantel's account goes even further: her Cromwell relies on statutes as one more tool in the arsenal of promoting the king's interests. Thus, in *Wolf Hall*, the narrative voice of Cromwell describes the Act of Supremacy as "an act which draws together all the powers and dignities assumed by the king in the last two years."<sup>30</sup> In Cromwell's view, the act is a shorthand or a stand-in for a set of (presumably expanded) powers that Henry had recently claimed and exercised. The act is simply a restatement of already extant royal authority. "It doesn't, as some say, make the king head of the church. It states that he is head of the church, and always has been. If people don't like new ideas, let them have old ones. If they want precedents, he has precedents."<sup>31</sup> The statute, then, is a neat encapsulation of preexisting law, and that law stems from royal practice met with acquiescence. As Guy puts it, "Treason, not heresy, became the penalty for denying the royal supremacy."<sup>32</sup>

When Mantel's Cromwell discusses the Treason Act of 1534, his words exemplify the view that statutes are codification mechanisms for the benefit of the executive rather than avenues for popular will. Cromwell-the-narrator describes the act, focusing on its treason by words provision, in this way:

A second enactment, which will come into force in the new year, defines the scope of treason. It will be a treasonable offense to deny Henry's titles or jurisdiction, to speak or write maliciously against him, to call him a heretic or a schismatic. This law will catch the friars who spread panic and say the Spanish are landing with the next tide to seize the throne for the Lady Mary. It will catch the priests who in their sermons rant against the king's authority and say he is dragging his subjects after him to Hell. Is it too much for a monarch to ask, that a subject keep a civil tongue in his head? *This is new, people say to him, this treason by words, and he says, no, be assured, it is old. It casts into statute law what the judges in their*

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Gardiner, to look through the bill he proposes to put into Parliament to secure the succession of Anne's children," Mantel's Cromwell notes. (The "he" in "the bill he proposes" is most likely Cromwell; the ambiguity on the first-person male pronoun is a hallmark of Mantel's style in *Wolf Hall*.) When Anne objects that the draft bill contains provisions concerning Anne's possible death ("she looks up, shocked: it mentions my death!"), Cromwell replies, "I can't exclude the event. . . . Parliament can do anything, madam, except what is against nature." *Wolf Hall*, 498-99.

<sup>28</sup> Elton, *Tudor Constitution*, 60.

<sup>29</sup> Guy, "The Henrician Age," 22.

<sup>30</sup> *Wolf Hall*, 546.

<sup>31</sup> Id.

<sup>32</sup> Guy, "The Henrician Age," 22.

*wisdom have already defined as common law.* It is a measure for clarification. I am all for clarity.<sup>33</sup>

In *Wolf Hall*, Cromwell deploys this clarified treason statute against Thomas More, who had refused to swear the oath of supremacy. In *Bring Up the Bodies*, it is the combination of the new statute's treason by words provision and the 1351 statute's prohibition on compassing the death of the king that destroys Anne, again wielded by Cromwell.<sup>34</sup>

Mantel depicts in careful detail the process by which Cromwell investigated Anne's "light ways" and assembled the case against her. As in the historical account, Anne's interactions with certain of Henry's male courtiers, and in particular her exchange with Norris, become the crucial evidence against her. Mantel's description of Anne's fatal exchange with Norris follows the historical account closely. Following Anne's statement that Norris "look[s] for dead men's shoes" in hoping to marry her if Henry were to die, Mantel has Norris ask Anne, "will you spill all your secrets or only some?" Anne then becomes "frantic," in Mary Shelton's retelling. "[S]he said a priest must be fetched, she said Harry must take an oath that he knew her to be chaste, a faithful good wife. She said he must take back everything said, and she would take it back too, and they would put their hands on the Bible in her chamber, and then everybody would know that it was idle talk."

In a pivotal interview with Norris shortly thereafter, Cromwell tells Norris, "The king knows what to think. He does not ask for eyewitnesses. He knows your treason and the queen's."<sup>35</sup> Norris replies: "I am not ashamed of any dealings I have had with Anne. . . . And if I am, Cromwell, even if I am . . . you cannot make my thoughts a crime."<sup>36</sup> Cromwell, however, follows the logic of the new treason act – his new treason act – to rebut Norris. "If thoughts are intentions, if intentions are malign . . . if you did not have her unlawfully, and you say you did not, did you intend to have her lawfully, after the king's death?"<sup>37</sup>

Although treason by words had been a common law doctrine for many decades, Cromwell's statutes had transformed it into a weapon to be wielded by the king's closest counselor. In an exchange with the poet and courtier Thomas Wyatt – a friend of Cromwell and another of Anne's suspected lovers, although he escaped charges – Mantel's Cromwell carefully explains the connection between Anne's adultery and treason. The conversation also illustrates Cromwell in his mode of skepticism toward law:

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<sup>33</sup> *Wolf Hall*, 546 (emphasis added).

<sup>34</sup> *Bring Up the Bodies*, 260 ("It is treason. Possibly. To envisage the death of the king. The law recognizes it; how short the step, from dreaming to desiring to encompassing. We call it 'imagining' his death: the thought is father to the deed, and the deed is born raw, ugly, premature.").

<sup>35</sup> *Id.*, 326.

<sup>36</sup> *Id.* at 327.

<sup>37</sup> *Id.* at 328.

[Wyatt:] “‘As I understand the law, a queen’s adultery is no treason.’

[Cromwell:] ‘No, but the man who violates her, he commits treason’

‘You think they used force?’ Wyatt says drily.

‘No, it is just the legal term. It is a pretence, that allows us to think well of any disgraced queen. But as for her, she is a traitor too, she has said so out of her own mouth. To intend the king’s death, that is treason.

‘But again,’ Wyatt says, ‘forgive my poor understanding. I thought Anne had said, ‘If he dies,’ or some such words. So let me put a case to you. If I say ‘All men must die,’ is that a forecast of the king’s death?’

‘It would be well not to put cases,’ he says pleasantly. ‘Thomas More was putting cases when he tipped into treason.’”<sup>38</sup>

The treason act gave a veneer of parliamentary authority to the silencing of those who would speak against the king, even if such speech consisted in little more than a secondhand report of a conversation in which the king’s mortality was discussed. It is therefore possible to view the treason act as nothing more than a fig leaf for personal rule and royal prerogative. Yet even if the act of Parliament was mere show, intended to cover might with a thin coating of right, that fact must mean that at least a few legal formalities were necessary to convince some important audience that the exercise of royal will was also lawful. In other words, even if the impetus for the statute came from Cromwell, the fact that he went to the effort of shaping a common law doctrine into legislation demonstrates something important about the nature of legal authority in the period.<sup>39</sup> The legislature was the arm of the executive, but legislative power itself clearly had some ideological *puissance* independent of the executive.

## II. Cromwell the Prosecutor.

The trial procedures, as Mantel depicts them, show a similar blend: legal forms and process are tools of the prince, but they nevertheless are adhered to because they serve crucial legitimizing purposes. Following the interrogations of Anne’s alleged co-conspirators, which will be discussed below, Cromwell directs his own retinue of young lawyers and courtiers to begin drafting indictments. Indictments are necessary for Cromwell, for although Anne is at this point held captive in the Tower of London, she has not yet been formally charged.<sup>40</sup> “[H]er judicial status uncertain, the charges not yet

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<sup>38</sup> Id. at 353-54.

<sup>39</sup> Cf. Margery S. Schauer and Frederick Schauer, “Law as the Engine of State: The Trial of Anne Boleyn,” 22 Wm. & Mary L. Rev. 49, 50 (1980) (“When law is used as ‘an engine of state,’ it explains as much about law as about the state.” (paraphrasing T.F. Plucknett’s observation that “[t]he forms of law became the engines for the perpetration of judicial murders”)).

<sup>40</sup> See Ives, 320 (“The Tudor rule was arrest first, interrogate later; no need to wait to collect evidence; delay spelled danger, particularly for Thomas Cromwell.”).

framed, it is hard to describe Anne. If she is a traitor she is, pending the verdict of the court, technically dead; though at the Tower, . . . she eats heartily enough, and giggles.”<sup>41</sup> But first Cromwell and his company must deal with the fact that the case against Anne still rests on weak evidence. As Cromwell emerges from an interview with Francis Weston, one of Anne’s alleged lovers, his young associates press for news: “‘Are we finished?’ Thomas Wriothesley, clerk of the signet and nicknamed ‘Call-Me Risley’ by his colleagues, asks.”<sup>42</sup> ‘He has confessed?’” Cromwell shakes his head in the negative: “‘Each man will give a good account of himself, but he will not absolve his fellows. Also, they will all say ‘I am innocent,’ but they do not say, ‘She is innocent.’ They are not able. It may be she is, but none of them will give his word on it.’” The pressure to get an indictment then leads Wriothesley to hint that force might be necessary to obtain a confession:

“Well, you have no confessions,” Wriothesley says. “Do you want us to get them?”

He gives Call-Me a look that knocks him back, so he steps on the foot of [Solicitor General] Richard Riche. “What, Wriothesley, do you think I am too soft to the young?”

Riche rubs his foot. “Shall we draw up specimen charges?”<sup>43</sup>

Indictments are necessary, but in order to get indictments, one must be willing to contemplate violence. Throughout the novels, Mantel’s Cromwell alternates between his two imperatives of law and force. Here again, Mantel gives us Tudor politics as a case study in the transition between medieval kingship based on notions of royal prerogative and the early modern conception of the monarch as bound by law, or at least by legal forms. When the indictments are finally produced, Cromwell views them as documents embodying the king’s emotions for consumption by the key audience anticipating and attending Anne’s trial. Cromwell reads them as artificial narratives, polemics written in order to shock and persuade. The language in the indictments carries “the king’s voice in every line: his outrage, jealousy, fear.” It is “more like a conversation” with a “scandal-loving woman, than it is like a document one carries into court; but all the same it has its merits, it makes a story, and it puts into the heads of those who will hear it certain pictures that will not easily be got out again.”

In addition to the lurid descriptions of Anne’s alleged conduct, including her incestuous relationship with her brother, Cromwell tells his clerks to add boilerplate language that will add a coating of legal authority to what a later generation of Britons would call a “sexed up” document.<sup>44</sup> Cromwell instructs the clerks to “add at every point, and to every offence, ‘and several days before and after.’ Or a similar phrase, that

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<sup>41</sup> *Bring Up the Bodies*, 310.

<sup>42</sup> Thomas Wriothesley was a cousin of Charles Wriothesley, who wrote the *Chronicle of England During the Reign of the Tudors* quoted above in the epigraph.

<sup>43</sup> *Bring Up the Bodies*, 341.

<sup>44</sup> “10 Ways to Sex Up a Dossier,” *The Guardian*, Sept. 23, 2003 (describing allegations that the British government “sexed up” a dossier dealing with Iraq’s weapons as a prelude to the 2002 invasion of Iraq).

makes it clear the offences are numerous, perhaps more numerous than even the parties themselves recollect.” In so doing, Cromwell says, “if there is specific denial of one date, one place, it will not be enough to injure the whole.”<sup>45</sup> Cromwell is the master of all his crafts here: the judge of salacious rhetoric that will sway the audience for the political theatre of the trials, and the canny lawyer who knows how to draft an impregnable document.

On Mantel’s account, the trials of Anne and her co-conspirators proceed according to Cromwell’s plans. Following the order to “bring up the bodies,” the alleged lovers who are commoners – Weston, Brereton, Smeaton, and Norris – are brought from the Tower to Westminster Hall on Friday, May 12, 1536. The four are brought before a commission of oyer and terminer, a special court of investigation that appears to have been summoned by Cromwell and Lord Chancellor Thomas Audley.<sup>46</sup> Weston, Brereton, and Norris plead not guilty; Smeaton pleads guilty. Mantel describes the process as “clear, logical, and designed to create corpses by due process of law.”<sup>47</sup> Watching the scene, Cromwell notes, “There is only one penalty for high treason: for a man, to be hanged, cut down alive and eviscerated, or for a woman, to be burned. The king may vary the sentence to decapitation.”<sup>48</sup> All four are found guilty and sentenced to drawing, hanging, and quartering. Mantel’s Cromwell, watching the convicted men leave the courtroom, notes that the guards have turned their axe edge of their halberds toward them, who “push through the uproar, dead men.”<sup>49</sup>

As peers, Anne and her brother George are brought three days later before the court of the lord high steward (their uncle, Thomas Howard, 3rd Duke of Norfolk), in the great hall of the Tower. Anne is tried first; she is “tainted now, she is dead meat,” Cromwell thinks. Cromwell acts as prosecutor. Then “the dizzying catalogue” of charges against Anne is read; “and then the loose words and taunts, the jealous quarrels and twisted intentions, the declaration, by the queen, that when her husband is dead, she will choose some one of them to be her husband, but she cannot yet say which.” Cromwell: “Did you say that?” Anne, shaking her head, in an “[i]cy little voice: ‘No.’”<sup>50</sup> Anne pleads guilty; she “disdains to enlarge, to excuse, extenuate: to mitigate. And there is no one to do it for her.”<sup>51</sup> She is convicted. The Duke of Norfolk reads the sentence: “Thou shalt be burned here, within the Tower, or else to have thy head smitten off, as the

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<sup>45</sup> *Bring Up the Bodies*, 349.

<sup>46</sup> See Ives, *Life and Death of Anne Boleyn*, 322-323 (discussing the rationale for and procedure leading to the commission).

<sup>47</sup> *Bring Up the Bodies*, 364.

<sup>48</sup> *Id.* at 364-65.

<sup>49</sup> *Id.* at 366.

<sup>50</sup> *Id.* at 373.

<sup>51</sup> *Id.* at 374. As Ives notes, “defendants in a Tudor criminal trial – even more, a state trial – were at an enormous disadvantage. They had no advance warning of the evidence to be put, and since defence counsel was not allowed, they were reduced to attempting to rebut a public interrogation by hostile and well-prepared Crown prosecutors determined not so much to present the government case as to secure a conviction by fair questions or foul.” Ives, *Life and Death of Anne Boleyn*, 340.

king's pleasure shall be further known."<sup>52</sup> An outcry arises in response to this sentencing in the alternative, but Cromwell pushes Norfolk to ignore the protest from the judges.<sup>53</sup> Anne is taken out; George is brought in. George plays to the crowd, reading aloud a statement about Henry's alleged lack of potency despite Cromwell's order not to do so. But George quickly realizes that his gambit has led him to repeat the phrase in court, and thereby to own them. "In one moment of bravado, to get the applause of the crowd, he has impugned the succession, derogated the king's heirs, even though he was cautioned not to do it." But then Cromwell thinks: "It is hard on George that he cannot even mention the charges against them without becoming guilty of them."<sup>54</sup> George, too, is condemned, sentenced to drawing, hanging, and quartering.

Mantel's account of the trials is well supported by the historical evidence. But her account elaborates on additional theme: Cromwell as the ultimate servant of the king, a counselor and politician able to use legal forms and processes to further the monarch's will. He achieves this by making mundane, gossip-fodder causes of action such as adultery the subject of statecraft and by using the institutions of the courts and Parliament to process the private intricacies and disappointments of one marriage. While making his final arguments in Anne's case, Cromwell's attention momentarily drifts, and he sees "the Attorney General stifle a yawn." Cromwell then muses, "I have done what I thought I could never achieve, I have taken adultery, incest, conspiracy and treason, and I have made them routine. We do not need any false excitement. After all, it is a law court, not the Roman circus."<sup>55</sup>

From the text, Cromwell's state of mind here is difficult to discern: is he congratulating himself, a blacksmith's son from Putney, for bringing about the execution of the queen of England, a queen whom he had himself helped to ascend the throne? Or does his pride spring from a more workmanlike source, from the attorney's pride in the craft of corralling unruly, unsavory facts into the forms of pleading?<sup>56</sup> The key appears to lie in the final phrase: "it is a law court, not the Roman circus." He, Cromwell (to borrow Mantel's phrasing), has shepherded the bloody bodies of the traitors into their graves in a way that satisfies the emotional and the procedural needs of both the sovereign and the broader court, and perhaps even the populace. The desire to avoid the Roman circus drives Cromwell the prosecutor, but because he serves a would-be emperor, the rule of law remains an elusive goal.

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<sup>52</sup> *Bring Up the Bodies*, 374.

<sup>53</sup> Id. at 375 ("There is a yelp from one of the justices. . . . Norfolk says, 'These fellows tell me I have not done it right, I cannot say burning or beheading, I have to say one, and they say it must be burning, that is how a woman suffers when she is a traitor.'"); see also Ives, *Life and Death of Anne Boleyn*, 341 ("An angry rustle went round the judges; such an either/or judgment was most improper!").

<sup>54</sup> *Bring Up the Bodies*, 377; see also Ives, *Life and Death of Anne Boleyn*, 342 ("Rochford showed his contempt by reading out what Cromwell wanted kept secret.").

<sup>55</sup> *Bring Up the Bodies*, 374.

<sup>56</sup> At least one spoken delivery of the words, by Simon Vance, conveys a clearly self-congratulatory state of mind. Hear *Bring Up the Bodies*, Audible.com, ch. 16, 7:00, Macmillan Audio (2012).

### III. Cromwell the Bureaucrat.

Despite Mantel's statement that she did not set out to rehabilitate Cromwell, a consistent theme in the novels is his dedication to modernizing and rationalizing the institutions of government. In a 2012 interview, Mantel appeared to endorse Elton's characterization of Cromwell as "the man who created a bureaucracy and parliamentary structure as bulwark[s] against kingly incompetence," a view that she contrasted with Bolt's depiction of Cromwell in "A Man For All Seasons."<sup>57</sup>

In the final chapters of *Bring Up the Bodies*, we see Cromwell, newly created Baron Cromwell of Wimbledon, preparing to extend his power while ever more aware of his own vulnerability to the sudden political shifts of Henry's court. Amid the giddiness of some of his supporters following the executions of Anne and the others, the still-wary Cromwell sees opportunities for progress and reform ("useful wreckage"<sup>58</sup>). Despite a needling sense of unease about his own future, Cromwell's grasp of realpolitik – and his desire to triumph over his growing number of enemies – emboldens him to seize the king's favor while he can. His goals are only partly personal, for Mantel depicts him as energized by new plans to reform the laws and administration of the realm, which in turn fills him with defiance:

Let them try to pull him down. They will find him armoured, they will find him entrenched, they will find him stuck like a limpet to the future. He has laws to write, measures to take, the good of the commonwealth to serve, and his king; he has titles and honours still to attain, houses to build, books to read, and who knows, perhaps children to father . . .<sup>59</sup>

Cromwell's desire to bring modernity to England is so irrepressible that it breaks in upon him at unlikely moments. Within the space of a half page in *Wolf Hall*, he moves from musing about Thomas More's horsehair jerkin and habitual scourging to contemplating the economy behind such tools of self-humiliation: "Are simple villagers paid – how, by the dozen? – for making flails with waxed knots?" Cromwell the man of business then thinks, "[P]eople ought to be found better jobs."<sup>60</sup> Similarly, in the aftermath of Anne's execution, during an interview with the king's illegitimate son Henry Fitzroy, Duke of Richmond, Cromwell the recordkeeper begins planning for a registry of births.<sup>61</sup> With these ironic juxtapositions between Tudor court intrigue and modern bureaucratic rationalization, Mantel creates a dynamic account of a polity in transition.

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<sup>57</sup> "Hilary Mantel: 'If I'm Suffering, I Can Make That Pay,'" The Guardian, Oct. 17, 2012.

<sup>58</sup> *Bring Up the Bodies*, 399.

<sup>59</sup> Id. at 406.

<sup>60</sup> *Wolf Hall*, 80.

<sup>61</sup> *Bring Up the Bodies*, 323 ("He means to begin, when he has time to plan it, some form of registration, documentation to record baptisms so he can count the king's subjects and know who they are, or at least, who their mothers say they are.").



Her account of Cromwell depends on the rise of the state, and her account of the early modern English state depends on Cromwell's vision.

Scholars of Cromwell have taken different views of his role in the development of the modern state. The principal points of controversy have been two: first, whether Tudor government did indeed witness a transformation from medieval personal rule to something approaching a modern, systematized, bureaucratic state; second, to the extent that such a shift took place, how significant Cromwell's role was.

As the title suggests, Elton's book *The Tudor Revolution in Government*, published in 1953, argued both for transformation and Cromwell's centrality. In a series of books and articles spanning more than two decades, Elton rehabilitated Cromwell, calling him the "most remarkable [statesman] of the century."<sup>62</sup> Viewing Cromwell as at heart a moderate who nonetheless embraced radical strategies, Elton argued that at the time of his execution in 1540, Cromwell had more to give: he was "cut off in the middle of vigorous activity and yet full of plans for the better organizing of the realm."<sup>63</sup> For Elton, Cromwell was a "constitutionalist."<sup>64</sup> He did not merely use Parliament as a mouthpiece of the executive branch, or its statutes as vessels for royal prerogative. Rather, he was a creative legal and political thinker who developed what became the early modern theory of the king-in-Parliament: a mixed executive-legislative entity in which sovereignty resided and which was the first genuine institution of English government independent of the personal rule of the monarch.

On Elton's view, the key elements of the Tudor revolution in government were (1) the establishment of the Court of Augmentations and the Court of First Fruits and Tenths, which grew out of the dissolution of the monasteries and formalized the crown's control of its lands and revenues; (2) the emergence of the office of the principal secretary, which Cromwell occupied and which would evolve into the secretary of state, "the prime agency through which king and council administered the realm"; and (3) the development of the Privy Council.<sup>65</sup> Moreover, Elton attributed the motive force for this transformation to Cromwell, rather than to Henry.<sup>66</sup> Elton thus emphasizes Cromwell's zeal for reform. "Cold-blooded and ruthless though he was," Cromwell also "realized the potentialities of common law and parliament" and consequently "elaborated and employed the equipment of constitutional monarchy."<sup>67</sup> Elton, like Mantel, portrays Cromwell as a thoughtful political theorist, not just the henchman of unconstrained royal power.

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<sup>62</sup> Cite TK.

<sup>63</sup> Elton, "The Political Creed of Thomas Cromwell," 76.

<sup>64</sup> Id. at 92.

<sup>65</sup> R.B. Wernham, Review of *The Tudor Revolution in Government*, 71 *English Historical Review* 92, 93 (1956).

<sup>66</sup> Elton, "The Political Creed of Thomas Cromwell," 70 (arguing that "the ideas underlying the Reformation emanated from Cromwell rather than the king, and that the Reformation legislation embodies his views of Church and State").

<sup>67</sup> Id. at 92.

Critics of Elton's view, chief among them R.B. Wernham and Brendan Bradshaw, have attacked this Cromwell-centric view of things, while the work of J.A. Guy has tended to support many of Elton's conclusions. A lively debate has been conducted in the pages of historical journals among these and other scholars, using as evidence specific policies such as statutory price controls, over just how novel Cromwell's reforms were, and whether those changes came about as a result of Cromwell's initiative or Henry's. The main counterclaim to Elton's thesis is captured by Wernham's observation that although "the routine work of collecting and administering the new revenues from the monastic lands, even the revenues from the other Crown lands and feudal rights, had to be delegated more than ever to organizations that could run on their own." But, Wernham notes, "that was administration, not government."<sup>68</sup> If claims that Cromwell brought about a revolution in government – meaning the state – rely on the expansion of the offices that oversaw the royal fisc, those claims may founder if the fisc was still seen as the property of the king rather than of the state.

A similar point can be made with respect to what Bradshaw terms "the hotly debated issue of king or minister."<sup>69</sup> Even if one allows that Henry's reign witnessed an increase in the revenues available to the king following the dissolution of the monasteries, and a consequent increase in the number of officials collecting those revenues, the question remains to what degree those policies and offices had any independence of the king. Did Cromwell's work lead to the replacement of what Elton termed "government by the king" with "government under the king," carried out by bodies such as the Privy Council?<sup>70</sup> Wernham's response is that although Cromwell's policies may have created more offices and officeholders, that bureaucracy was simply an arm of the executive, and so "dependent for its strength and effectiveness upon the strength and effectiveness of the monarch's personal action."<sup>71</sup> In other words, bureaucratic growth was evidence of Cromwell's power at the center, and therefore represented a tool of executive administration rather than the rise of a distinct institution.

Mantel clearly sides with Elton in this debate. In the novels, Cromwell's desire to make England work better extends beyond greasing the channels of royal revenue collection. Not only does he seek a "single coinage," he also hopes for "just one method of weighing and measuring, and above all one language that everybody owns," and he plans a roads bill that would "give employment to men without work."<sup>72</sup> It is Cromwell alone who grasps the extent of the commercial, political, and legal webs connecting subjects to each other and to their king. Her Cromwell seizes the opportunity to transform the king's marital problems, dynastic anxieties, and diplomatic negotiations into the impetus toward self-conscious progress. And some essential element in his character makes him regard these reforms as a test of his own strength. Consider this passage from *Wolf Hall*:

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<sup>68</sup> Wernham, Review, 94.

<sup>69</sup> Brendan Bradshaw, "The Tudor Commonwealth: Reform and Revision," 22 *Historical Journal* 455, 461 (1979).

<sup>70</sup> Elton, *Tudor Revolution in Government*, 94.

<sup>71</sup> Wernham, 94.

<sup>72</sup> *Bring Up the Bodies*, 70, 43.

Business always increases . . . . A number of noblemen are indebted to him, not just for arranging loans, but for making their estates pay better. It is not a matter of exactions from tenants, but, in the first place, giving the landowner an accurate survey of land values, crop yield, water supply, built assets, and then assessing the potential of all these; next, putting in bright people as estate managers, and with them setting up an accounting system that makes yearly sense and can be audited. Among the city merchants, he is in demand for his advice on trading partners overseas. He has a sideline in arbitration, commercial disputes mostly, as his ability to assess the facts of a case and give a swift impartial decision is trusted here, in Calais and in Antwerp. If you and your opponent can at least concur on the need to save the costs and delays of a court hearing, then Cromwell is, for a fee, your man; and he has the pleasant privilege, often enough, of sending away both sides happy. These are good days for him: every day a fight he can win.<sup>73</sup>

We can hear a similar tone of energetic ambition, albeit with a vaguely sinister undercurrent, in the historical Cromwell's 1538 prayer "that God gyue me no longer lyfe than I shall be gladde to vuse myn office in ediciatione, and not in destruction."<sup>74</sup>

Perhaps one way to reconcile the historiographical debates about Cromwell and the growth of the state is to consider the developments of Henry's reign as a prelude to the development of England's overseas empire under Henry's daughter Elizabeth. In 1533, Parliament passed the Statute in Restraint of Appeals, which was drafted by Cromwell and contained the distilled constitutional essence of the English Reformation. The statute provided that the king, and not the pope, was the ultimate legal authority in the realm. The "one supreme head and king" possessed

plenary, whole and entire power, preeminence, authority, prerogative and jurisdiction to render and yield justice and final determination to all manners of folk resiants [sic] or subjects within this realm, in all causes, matters, debates and contentions happening to occur, insurgue or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world.<sup>75</sup>

The statute thus made the king the supreme source of jurisdiction within the realm and prohibited as unlawful appeals to other sovereigns. It also amplified the Tudor practice of passing statutes that codified and strengthened older common law precedents. Since the fourteenth century, the writ of praemunire had been used to "protect the king's rights against interference by foreign courts," especially the papacy.<sup>76</sup> The praemunire had been wielded against Cardinal Wolsey in 1529, when he failed to obtain Henry's divorce

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<sup>73</sup> *Wolf Hall*, 83.

<sup>74</sup> 2 *Life and Letters of Thomas Cromwell* 129, ed. R.B. Merriman (1902).

<sup>75</sup> Statute in Restraint of Appeals, 24 Henry VIII c. 12 (1533).

<sup>76</sup> Elton, *Tudor Constitution*, 25 n.61; see also *Wolf Hall*, 153 ("The law of praemunire dates from another century. No one who is alive now quite knows what it means. From day to day it seems to mean what the king says it means.").

from Katherine of Aragon, leading to Wolsey's downfall; Mantel uses it in her plot as well. Of course the immediate imperative behind the Statute in Restraint of Appeals was to bring jurisdiction over the divorce within the ambit of English courts rather than those in Rome.

Yet the authority behind the Statute in Restraint of Appeals rested on a particular claim about the nature of the English polity. The act began with the statement that "this realm of England is an empire, and so hath been accepted in the world" – and therefore Henry was an emperor over whom no superior authority existed.<sup>77</sup> This was one of the first recorded characterizations of England as an empire, and it would give rise to extensive debates centuries later, as British North Americans reshaped the constitutional relationship between the colonies and the imperial center.<sup>78</sup> Although in 1533 those debates lay far in the future, the act articulated a new view of the nature of the polity.<sup>79</sup> Even if Cromwell's contributions to the rise of the English state were debatable, the act was a significant initial assertion of the English empire. Moreover, that empire would be launched into the New World by Elizabeth, the offspring of Henry's union with Anne – the very union for which the act had been passed in the first place.

#### IV. Cromwell the Evil.

Locked in the room with these mixed characterizations of Cromwell as executive agent, prosecutor, and administrator, there is also Cromwell the torturer, the evil enforcer of the king's will. Here Mantel uses her readers' expectations of Cromwell to create a multilayered narrative in which the reader is never certain whether Cromwell did or did not use torture to extract information and confessions from his opponents. We do know, however, that Cromwell's contemporaries believed that he used torture; moreover, Mantel's Cromwell makes us aware that he knows that his contemporaries believe this of him.

The locus of reports, then and now, of Cromwell's use of torture is the interrogation of Mark Smeaton, Anne's musician and alleged lover. Most historians view Smeaton as a bystander to the intrigues among the Boleyns, the Seymours, and Cromwell, but he was swept up in the conflict because he was widely viewed as part of the circle of licentiousness and immorality that surrounded Anne. Unlike Norris, Brereton, Weston, and Rochford, however, Smeaton's status as a musician, and likely a foreigner, made him a relative outsider with few allies at court. Smeaton was the only one of Anne's alleged lovers and co-conspirators to confess.<sup>80</sup> Over the same weekend as Anne's quarrel with Norris, which was followed by her exchange with Henry while she was carrying Elizabeth, in the window of Greenwich Palace, word reached Cromwell that

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<sup>77</sup> 24 Henry VIII c. 12.

<sup>78</sup> See Alison L. LaCroix, *The Ideological Origins of American Federalism* 12 (2010).

<sup>79</sup> See Elton, *Tudor Constitution*, 341.

<sup>80</sup> Anne's chamberlain, Sir Edward Baynton, who helped collect evidence against her wrote that "here is much communication that no man will confess anything against her, but all-only Mark of any actual thing." Quoted in Ives, 326.

Smeaton was suspected as the queen's lover. Cromwell had Smeaton taken to Cromwell's house in Stepney, where he was questioned for twenty-four hours before confessing to adultery with the queen. On Monday, Smeaton was dispatched to the Tower. Cromwell, and even Henry, then began to press the others to confess. Ives observes that Smeaton's confession "turned the denials of Anne, Norris, and later Rochford into evidence of guilt"<sup>81</sup> because it suggested that they were all implicated in the clandestine events taking place in Anne's rooms.

Mantel's account of these events takes full advantage of the ambiguities surrounding both sixteenth- and twenty-first-century beliefs about Cromwell's activities. In a scene of excruciating detail and suspense – even though the reader knows how it will end – Mantel shows Cromwell's careful psychological torture of Smeaton. A request for a fire from Cromwell, whom Mantel calls "Master Secretary" as though to emphasize that he is in his official role as the king's servant, leads the nervous Smeaton to panic: "Just an ordinary household request, and yet Mark thinks they mean to burn him. He jumps off his stool and makes for the door."<sup>82</sup> Master Secretary then builds the pressure by asking Smeaton whether he would like to be left alone with Cromwell's burly French servant Christophe, who is lurking at the door. Cromwell continues to build the threats, locking Smeaton in a dark closet overnight with Christmas decorations covered in feathers and points so that Smeaton's mind creates a scene of torture for himself. The following morning, Smeaton confesses to adultery with Anne and also names dozens of other courtiers who allegedly were also her lovers.

Throughout the scene, Cromwell is acutely aware of his reputation as a rough brute,<sup>83</sup> even a torturer. Indeed, he was not alone in this; during the early modern period, torture was considered a permissible tool for obtaining confessions, especially from political criminals who were alleged to have conspired against the monarch.<sup>84</sup> But other characters repeatedly mention Cromwell's reputation. After passing incriminating rumors to Cromwell, Jane Rochford – wife of George Boleyn – notes, "[Y]ou are what you are, a man of resource who spares no one. It will be thought that you drew the truth

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<sup>81</sup> Id.

<sup>82</sup> *Bring Up The Bodies*, 276.

<sup>83</sup> This scene, which takes place on a 1535 visit to Katherine of Aragon in exile, is illustrative:

"How do we know you?" a sentry bellows. "Show your colours."

"Tell him show a light and let me in," he says, "or I'll show his backside my boot."

He has to say these things, when he's up-country; it's expected of him, the king's common adviser.

*Bring Up the Bodies*, 83.

<sup>84</sup> Elton, *Tudor Constitution*, 172 (noting that while the Court of Star Chamber did not torture, the Privy Council did use the rack, and that confusion about which institution conducted torture stems from "a total confusion between this court of law [Star Chamber] and the security services of the state [the Privy Council]"). Elton also observes that "all governments of the day" used torture to extract the details of treason. Id. at 172 n.28.

out of me, whether I was willing or no.”<sup>85</sup> After hearing news of Smeaton’s confession, Anne’s uncle, the Duke of Norfolk, greets Cromwell, “‘Now, Cromwell! I hear the singer has sung to your tune. What did you do to him? I wish I had been there.’”<sup>86</sup> While Anne and the others await their fates, Cromwell reflects to himself on his power: “None of the men except Mark have been properly interrogated: that is to say, interrogated by him.”<sup>87</sup> Only during his interrogation of Norris does Cromwell appear lose control, but only briefly, in response to Norris’s challenge – and only to threaten:

“You will not put gentlemen to the torture, the king would not permit it.”

“There don’t have to be formal arrangements.” He is on his feet, he slams his hand down on the table. “I could put my thumbs in your eyes, and then you would sing ‘Green Grows the Holly’ if I asked you to.” He sits down, resumes his former easy tone. “Put yourself in my place. People will say I have tortured you anyway. They will say I have tortured Mark, they are already putting the word about. Though not a gossamer threat of him is snapped, I swear. I have Mark’s free confession.”<sup>88</sup>

Such scenes are the apotheosis of Mantel’s meta-Cromwell: aware of himself, aware of his own reputation, and able to use that reputation in order to compel others to do his will.

Mantel thus presents Cromwell as always stepping back from the precipice: using threats of torture, but not torture itself, to extract the admissions he needs.<sup>89</sup> Cromwell pursues this course partly because he is the king’s loyal servant and enforcer. But Mantel gives him an additional motive for punishing Brereton, Norris, Weston, and Boleyn: at a masque several years before, they performed a humiliating impersonation of Cromwell’s former patron, Cardinal Wolsey. As he finishes his interrogation of Norris, Cromwell sees the scene in his mind: “Four men, who for a joke turned the cardinal into a beast; who took away his wit, his kindness and his grace, and made him a howling animal, groveling on the boards and scrabbling with his paws.”<sup>90</sup> Throughout *Bring Up the Bodies*, we become increasingly aware of the depth of Cromwell’s feeling for Wolsey, which leads him to merge his own revenge against the four courtiers with Henry’s need to be rid of Anne. “He needs guilty men. So he has found men who are guilty. Though perhaps not guilty as charged.”<sup>91</sup> The theme of Cromwell’s loyalty to Wolsey emerges

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<sup>85</sup> *Bring Up the Bodies*, 268.

<sup>86</sup> *Id.* at 293.

<sup>87</sup> *Id.* at 323.

<sup>88</sup> *Id.* at 325-26.

<sup>89</sup> Ives concludes that Cromwell likely did not torture Smeaton, other than through “psychological pressure,” perhaps including a promise of a pardon if he confessed, or perhaps a promise to avoid death by drawing, hanging, and quartering. Cromwell also had Smeaton (and none of the other prisoners) held in irons, which Ives speculates was “an earnest of what worse might befall if he changed his story.” Ives, *Life and Death of Anne Boleyn*, 327.

<sup>90</sup> *Bring Up the Bodies*, 329.

<sup>91</sup> *Id.* at 330.

slowly, and it appears to provide an emotional justification for many of Cromwell's other actions. Perhaps, then, Mantel's Cromwell does have a heart after all?

But Mantel appears unwilling to give her readers that solace. Instead, in a few key scenes, she portrays a different kind of Cromwell: an almost comic-book-style evil villain. Not surprisingly, the most telling such exchange comes during the interrogation of Smeaton while he is being held at Cromwell's home. Besides Smeaton and Cromwell, also present are Cromwell's protégé Thomas Wriothsesley (nicknamed "Call-Me") and Cromwell's nephew Richard Cromwell (great-grandfather of Oliver). "I explained to you, Mark, that Mr. Wriothsesley will write down what we say. But he will not necessarily write down what we do. You follow me? That will be just between us." Mark's reply: "'Mother Mary, help me.'" <sup>92</sup> Then follows this exchange:

Mr Wriothsesley says, "We can take you to the Tower where there is a rack."

"Wriothsesley, may I have a word with you aside?" He [Cromwell] waves Call-Me out of the room and on the threshold speaks in an undertone. "It is better not to specify the nature of the pain. As Juvenal says, the mind is its own best torturer. Besides, you should not make empty threats. I will not rack him. I do not want him carried to his trial in a chair. And if I needed to rack a sad little fellow like this . . . what next? Stamping on dormice?"

"I am reproved," Mr Wriothsesley says.

He puts his hand on Wriothsesley's arm. "Never mind. You are doing very well." <sup>93</sup>

This exchange shows us yet another Cromwell: not the political operative, not the prosecutor, and not the administrator. This Cromwell is coldly cruel, calculating the precise measure of suggestion needed to make his victim become the victim's own torturer. But most striking is Cromwell's tone in the final statement to Wriothsesley. His display of concern for Wriothsesley is chilling in its clinicalness. He rushes to reassure Wriothsesley that he is "doing very well" at interrogating a political prisoner whose confession he knows to be coerced and, even more important, false. <sup>94</sup> Smeaton's confession is the key to the entire case against Anne and her alleged lovers. But the real targets are the four men whose complicity in the Wolsey parody so enraged Cromwell. "He has spun his enemies to face him, to join him: as in a dance. He means to spin them away again, so they look down the long cold vista of their years . . . so they bed down in ruins, and wake up cold." <sup>95</sup> The enemies here are the four from the Wolsey masque, and perhaps also the extended Boleyn family with their open scorn for Cromwell and Wolsey.

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<sup>92</sup> Id. at 277.

<sup>93</sup> Id. at 277.

<sup>94</sup> Cromwell asks Smeaton, "'You have had to do with the queen how many times?' Mark says, 'A thousand.' [Cromwell's servant] gives him a little slap. 'Three times or four.'" Cromwell replies: "'Thank you.'" Id. at 284.

<sup>95</sup> Id. at 352.

Anne is therefore a pawn even in Cromwell's crusade against her; she is a casualty of what Mantel suggests may be Cromwell's sole noble deed, his campaign to avenge Wolsey. This cruelty is apparent in the thoughts that Mantel puts in Cromwell's voice as he helps Anne make her way to the Tower after her arrest. Anne falls to the ground, "her head thrown back, wailing." Cromwell "takes hold of her – since no one else will do it – and sets her back on her feet." As in the later scene with Wriothesley, we see Cromwell acting in an apparently sympathetic manner. But then the inhumanly cold observation: "Silent, she steadies herself against his shoulder, leans into him: intent, complicit, ready for the next thing they will do together, which is kill her."<sup>96</sup> Mantel thus saves Cromwell from the charges of torture, at least with respect to Smeaton; we are not permitted access to the events that gave rise to his contemporary reputation for roughness. But in these moments of utter coldness, Mantel gives us not just a devoted servant, but a hollowed-out guilt-conjuring machine. As Wriothesley observes admiringly, "It is not so much, who is guilty, as whose guilt is of service to you."<sup>97</sup> Cromwell's desire for revenge for Wolsey initially makes him appear human, but by the end of *Bring Up the Bodies*, his clinical observations in the scenes with Wriothesley and Anne suggest that he has started to become the cold-eyed, inhuman figure pictured in Holbein's portrait. The bodies are brought up for punishment, just as those bodies once brought up the pretend body of Wolsey for the entertainment of the court. Eventually, we know, Cromwell's body will also be on the pile.

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<sup>96</sup> Id. at 299.

<sup>97</sup> Id. at 285.



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